

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 227 of 2000
Decided on 04. 07 . 2007

State of H P

.....Appellant

Versus

Mast Ram

..... Respondent

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?¹ . Yes.

For the appellant : **Mr. V.K.Verma, Additional Advocate General.**

For the Respondent **Mr. Arun Kumar, Advocate, vice Mr Sanjeev Bhushan, Advocate.**

Surinder Singh, J.

The respondent was put on trial, under Section 406 of the Indian Penal Code, before the Additional Chief Judicial Magistrate, Court No.1, Shimla, in Cr. Case No. 212/2 of 1995. The trial court had acquitted the respondent vide its detailed judgment passed on 9.6.1999, which has been assailed in this appeal on law and facts.

Precisely, the case of the prosecution has been that:

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ? yes.*

the Damage report No.84/K-9091 dated 28.12.1990 was chalked out by Paras Ram Forest Guard (PW) against the respondent for illicit felling of three trees of **Kail** II-B, from the Government Forest "Talap". It was allegedly converted in different sizes. The case property i.e. 25 scants of kail having 179.50 CFTs was seized and given on **spuardari** to accused-respondent Mast Ram. A challan/complaint against the respondent, was put in the court. The accused was acquitted and the case property was ordered to be confiscated to the State of Himachal Pradesh. In order to take possession of the timber, which was given on spuradari to the respondent, a notice was given by the Forest Department to the respondent to hand over the same to them. Pursuant to the notice, respondent informed that he was not given the case property on spuardari, as alleged. Thereupon, the Block Officer, Junga vide his complaint Ex.PW-1/A informed and requested the police to lodge a FIR.

On the basis of the aforesaid complaint, a formal FIR No.No.179/94 was registered on 14th May, 1994. Police visited the spot, prepared the site plan and took into possession the Damage Report Book Ex.PW-4/B and other relevant documents vide

memo Ex.PW-4/A. The opinion of the Government Examiner of Questioned Documents was sought. After receipt of the report of the aforesaid Examiner and recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure, case was put up in the court for trial.

Finding a ***prima-facie*** case against the respondent, he was charge-sheeted for offence punishable under Section 406 of the Indian Penal Code to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Paras Ram (PW-2), Balraj Labourer (PW-3), Constable Janam Singh (PW-4), Kishori Lal Forest Guard (PW-5), Shobha Lal (PW-1) and S R Premi, Naib Tehsildar, Junga, in whose presence the specimen signatures of the respondent-accused were taken was examined as PW-6.

The respondent was examined under Section 313 CrP.C. He denied the circumstances put to him and did not lead any defence evidence.

After going through the evidence and hearing the learned counsel for the parties the trial court acquitted the respondent.

This court vide order dated 4.5.2000 granted leave to appeal and admitted the matter. Now the matter has been finally heard.

It is contended in appeal that the evidence of the prosecution was not appreciated by the trial court in its right perspective which has resulted in to miscarriage of justice.

I have heard Shri V K Verma, learned Additional Advocate General and Shri Arun Kumar, learned counsel appearing for the respondent in detail and have carefully examined the evidence on record.

At the very outset, I would like to say that the entire case of the prosecution hinges upon *spurdarinama*, which was part of the Damage Report No.35. But unfortunately, said *spurdarinama* did not find light of the day before the trial court. Be it stated that the respondent was acquitted in the earlier case in which the timber was given on *spuardari* to him. It is not understood when the respondent was an accused himself, as to how and why and under what circumstances the case property was given on *spuardari* to him. Paras Ram Forest Guard has not explained this fact. Be it as it may, to prove the instant case against the respondent

the prosecution is obliged to prove the ingredients of the offence charged, which are as follows:

- (1) *entrusting any person with property, or with any dominion over property;*
- (2) *The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation-*
 - (i) *of any direction of law prescribing the mode in which such trust is to be discharged; or*
 - (ii) *of any legal contract made touching the discharge of trust.*

Precisely, in order to sustain conviction of the respondent, the prosecution is under obligation to prove the ingredients of the offence under Section 405 IPC, as reported in ***Kailash Kumar Sanwatia -vs- State of Bihar and another*** (2003) 7 Supreme Court Cases 399, which reads thus:

"The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by

dishonest intention or not; misappropriated it or converted it to his own use to the detriment of the persons who entrusted it."

Paras Ram (PW-2), who had initially chalked out the Damage Report on 28.12.1990 has only given oral version to the effect that the case property was handed over to the respondent on spuardarinama but he nowhere has stated that any spuardarinama was ever executed to that effect. Unless or until entrustment of the case property or dominion over it is proved, no case can be said to have been made out against the respondent. Damage report Book Ex.PW-4/B did not contain Damage Report No.35 dated 28.12.1990 which is alleged to have contained the spuardarinama.

Therefore, in these circumstances, in my considered opinion the respondent was rightly acquitted by the trial court. As such, the judgment of acquittal passed by the trial court cannot be said to be perverse. Therefore, no case for interference by this court is made out.

Accordingly, for the reasons aforesaid the appeal is dismissed. The respondent is discharged

of the bail bonds, entered upon by him during the proceedings of the trial at any stage.

July 4, 2007
(D)

(Surinder Singh), J.

